Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE,
Defendants in Error.

Writ of Error to Supreme Court of Louisiana.

On Motion of Defendants in Error to Dismiss or Affirm.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS IN ERROR, IN REPLY TO BRIEF OF PLAINTIFF IN ERROR.

We have this day (November 7, 1916), been served with a copy of the brief of plaintiff in error.

The brief makes it plain that no Federal questions are involved in the case. No attempt is made to answer our arguments and citation of decisions in favor of our motion to dismiss for want of jurisdiction, or to affirm. The errors charged against the judgment of the Supreme Court of Louisiana involve no Federal questions—only matters exclusively within the jurisdiction and discretion of that Court.

We only find it necessary to refer to the following statements made on page 2 of the brief of plaintiff in error, viz.:

> "In the very nature of the case, it was imperative for the Supreme Court of Louisiana to receive the evidence of Gasquet's return to competency, or to remand the case to the trial Court. * * * The Civil Code of Louisiana, Article 396, expressly recognizes the power of the Supreme Court to receive original evidence in interdiction proceedings."

Article 396 of the Civil Code of Louisiana has not been in force in Louisiana since the adoption of the Constitution of 1845, Article 63 of which gave it appellate jurisdiction only, and was repeated in the subsequent Constitutions of 1852, 1864, 1868, 1879, 1898 and 1913.

In *Bland vs. Edwards*, 52 Louisiana Annual, 822, an interdiction suit in which an application was made to the Supreme Court of Louisiana to issue an order authorizing the taking of further evidence under Article 396 of the Revised Civil Code, the Court said:

> "He (appellant), it is true, alleges that by proper evidence, by leave of the Court, under Article 396, Revised Civil Code, it can be shown that the judgment can be reversed. The article just cited cannot be enforced by permitting further evidence to be heard be-

> fore this Court. The Constitution has determined the mode to be followed in bringing up appeals from inferior courts. The law provides that the appeal be heard on the pleadings and documents transmitted from the inferior courts. Evidence, therefore, coming up in any other manner, is not to be heard. The articles of the Code of Practice are plain upon the subject. This Court referred to Article 396 of the Revised Civil Code in one of its decisions (chiefly indicating the law's solicitude in the matter of interdiction), holding that ti should be provoked only with the greatest care, and after thorough investigation. Upon a careful examination of this question we feel certain that Article 396 is a dead letter. It was one of the articles of the Code of 1808, and may have been given effect when courts of appeal had original jurisdiction to a far greater extent than they now have. It was copied in the Code adopted since, although certainly at variance with laws regulating appeals. (Code prac., Art. 894.) The appeal is therefore dismissed *ex proprio motu.*"

As to the charge that "it was imperative for the Supreme Court of Louisiana * * * to remand the case to the trial Court":

The remanding of the case was a matter entirely within the discretion of the Supreme Court of Louisiana which cannot be controlled, but it is but fair to the Supreme Court of Louisiana to again point out that the "Motion to Abate and Dismiss or Remand" (Rec., p. 40), was filed on March 4, 1915, thirty-nine days after the Supreme Court had decided the case on January 25, 1915 (Rec., p. 28), and twenty-two days after plaintiff in error had applied for a rehearing (Rec., p. 35); and to also again point out that, under Articles 420 and 421 of the Revised Civil Code, quoted in full

in our original brief, plaintiff in error (to paraphrase those articles) could and can at any time "when the causes which gave rise to his interdiction have ended" apply to the Court which interdicted him "to repeal the definitive judgment by which the interdiction has been pronounced," and therefore there was no necessity to remand.

We respectfully submit that the motion to dismiss should prevail, and that plaintiff in error has failed to meet any of the arguments and authorities cited by defendants in error, or to advance a single reason or argument to sustain the jurisdiction of this Court.

GEORGE DENEGRE,
VICTOR LEOVY,
HENRY H. CHAFFE,
Of Counsel for Defendants in Error.

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Defendants in Error.

SYLLABUS.

1. This record is barren of any proof of evidence that plaintiff in error has removed permanently from the

State of Louisiana with the intention of remaining permanently in, and becoming a citizen of Tennessee.

2. The record is barren of any evidence or proof of the jurisdiction of the Probate Court of Shelby County, Tennessee, to hear and determine the issues presented to it.

3. No statute or law of Tennessee was filed or offered in evidence in the Supreme Court of Louisiana by which the jurisdiction or powers of the Tennessee Court could be determined and the faith and credit to which it was entitled by law or usage in the State of Tennessee be ascertained.

4. This Court will not take judicial notice of the decisions of the Courts, or laws, of one State in a case coming to it from another State.

May It Please the Court:

Having been obliged to submit this cause on the briefs on file on our motion to dismiss, or affirm, because unable to be present at the argument on November 16th, and the cause having been argued by counsel for plaintiff in error, who, on November 23rd, served upon us a copy of their brief on the merits, we respectfully ask leave to file this brief in reply.

As the brief of plaintiff in error is really an argument of case No. 656 of the Docket of this Court, entitled Gasquet, Plaintiff in Error, v. Charles Payne Fenner, Exe-

cutor, and Mrs. Fenner and Mrs. Westfeldt, sisters of Gasquet, none of whom are parties to this record, and as the motion to consolidate that cause with this one was not granted, or considered, prior to the argument of this cause, we will not follow plaintiff in error's brief and discuss a case not before the Court, but will content ourselves with briefly answering some portions of the brief.

FACTS OF THE CASE.

We adhere to the statement of facts in our brief on motion to dismiss or affirm and call attention to some facts shown by the record.

Mrs. Fenner and Mrs. Westfeldt, sisters of Gasquet, are not parties to this record, they withdrew in order that their husbands might testify (See opinion of Supreme Court of Louisiana, R., p. 28).

The correctness or incorrectness of the judgment of the Criminal District Court for the Parish of Orleans is not involved in the case before this Court.

The correctness or incorrectness of the judgment of the Court of Appeals for the Parish of Orleans is not involved in the case before this Court; the Supreme Court of Louisiana, the highest Court of the State, held that the said Court of Appeals had exceeded its jurisdiction, and this Court has repeatedly held that the decision of the Supreme Court of a State on such a point is binding on this Court.

The Supreme Court of Louisiana having jurisdiction on appeal both of facts and law (Constitution of 1913,

Art. 92), decided against plaintiff in error on the facts. A glance at plaintiff in error's petition for rehearing to the Supreme Court of Louisiana (Rec., pp. 59-60 [illegible]), shows this fully without even the necessity of looking further.

There is no evidence in the record that plaintiff in error

> "removed permanently from the State of Louisiana to the State of Tennessee with the intention of becoming a citizen of that State and domiciled himself in the City of Memphis" (Plaintiff in error's brief on merits, p. 9),

beyond the allegations of plaintiff in error on the "Motion to Abate and Remand" filed in the Supreme Court of Louisiana, after the decision of that Court, granting an application for rehearing, and beyond the finding of that fact contained in the finding of the Probate Court of Tennessee (Rec., p. 30 and pp. 39 to 40).

There is no evidence or proof in the record of the jurisdiction of the Probate Court of Tennessee to hear and determine the issues presented to it.

No statute or law of Tennessee was filed or offered in evidence or even referred to in the Supreme Court of Louisiana, by, or through which the jurisdiction and powers of the Probate Court of Tennessee can be learned —the motion to abate and dismiss, or remand, filed in the Supreme Court of Louisiana (Rec., p. 41) based upon the proceedings in the Tennessee Court, says they were taken "in accordance with Sections — of the Revised Laws of Tennessee."

The "motion to abate and dismiss or remand" (Rec., pp. 40 to 49) and exhibits annexed thereto is barren even

of the allegations that the County Court was vested with jurisdiction to the premises and the rest of the parties.

The concluding part of the judgment of the Probate Court of Tompkins County Nov. 2, 40, inevitably leads to the conclusion that if the Probate Court of Tompkins had any jurisdiction whatsoever to matters of jurisdiction, its jurisdiction to entertain a proceeding involving a person's conditions of mind and capacity, or the powers, to control himself and his property, is confined to cases in which the County of Tompkins have previously a judgment of incompetency, and placed the responsibility of the incumbent in the custody or charge of some officer accountable to the Court, and a proceeding is initiated to set aside, or revoke this judgment, and restore his liberty.

The concluding part of the judgment of the Probate Court reads:

> "It is further adjudged, decreed and declared by the Court that said Howard Coughlin [illegible] is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to possession [illegible] of his property having control, charge or management of any of the same and it appears that [illegible] of the said Report in favor of the petitioner against the allegations contained [illegible] thereof."

It is evident that the words:

> "any discretion of the said Surrogate in respect of the proceedings [illegible] [illegible] [illegible] being barely 'subject to'"

is a stock form of judgment used when a decree of interdiction theretofore rendered by a Court in Tennessee is set aside, as the Courts of one State cannot set aside the judgments of the Courts of another State.

The portion of the judgment entitling an interdict to a "settlement from any and all persons having control, charge or management of his estate," can only affect persons vested with control by the laws of Tennessee.

ARGUMENT.

In our "Supplemental Brief on Behalf of Defendants in Error, in Reply to Brief of Plaintiff in Error," on the motion to dismiss or affirm, heretofore filed, we pointed out the error of plaintiff in error, now again repeated, in claiming that Article 396 of the Civil Code of Louisiana is in force, and that the Supreme Court of Louisiana had the power, and it was, therefore, its duty, to receive additional evidence in this case.

The case of **Franke v. His Wife, 29 A., 304**, which plaintiff in error (Brief on the Merits, p. 16) says fully discussed and recognized the right of the Supreme Court of Louisiana "to examine the interdict himself to satisfy itself that he was a fit subject for interdiction" and to receive new proof, is the case referred to in **Bland v. Edwards, 52 An., 822**, quoted by us as deciding that the Supreme Court of Louisiana had only appellate jurisdiction, that it could not hear evidence, and that Article 396 of the Civil Code of Louisiana is a dead letter, a relic of

the Code of 1808. The Code of 1808 was adopted prior to the admission of Louisiana into the Union, and while it was a territory, the highest Court of the territory was the "Superior Court" which, under Section 4 of the Act of Congress, entitled "An Act Erecting Louisiana into Two Territories, and Providing for the Temporary Government Thereof," approved March 26th, 1804, had "original and appellate jurisdiction in all civil cases of the value of one hundred dollars."

The first Constitution of Louisiana, adopted January 22nd, 1812, in pursuance of "An act to enable the people of the Territory of Louisiana to form a Constitution and State Government," approved February 20th, 1811, provided that:

> "Article IV. Section 1. The judiciary powers shall be vested in a Supreme Court and inferior Courts.
>
> "Section 2. The Supreme Court shall have appellate jurisdiction only, which jurisdiction shall extend to all civil cases in which the matter in dispute shall exceed the sum of three hundred dollars."

This restriction of the Supreme Court to appellate jurisdiction has been repeated in all subsequent Constitutions, viz: Constitutions of 1845, Article 63; 1852, Article 62; 1864, Article 70; 1868, Article 74; 1879, Article 81; 1898, Article 85; 1913, Article 85.

So that the Supreme Court of the **State** of Louisiana has never had original jurisdiction, and was never at any time empowered "to examine the interdict himself to satisfy itself that he was a fit subject for interdiction,"

and we are at a loss to understand why counsel for plaintiff in error should repeat such a statement, especially when no such point was made in the Supreme Court of Louisiana.

We admit that Article 415 of the Revised Civil Code of Louisiana likens the interdict to a minor (Brief of plaintiff in error on merits, p. 18), that a minor's domicile may be changed by his tutor, and that the minor may apply to the Court of his domicile to be emancipated, and is not bound to apply to the Court which appointed the tutor, but minority is not, like interdiction, the consequence of a judgment, which remains in full force until set aside.

Article 420 of the Code, quoted by plaintiff in error (Brief, p. 17) says there must be a definitive judgment, pronouncing the repeal of the interdiction, and this repeal can only be pronounced by the Court which rendered it, no Court having the power to do so under the Constitution and laws of Louisiana except the Court which rendered the judgment or the proper appellate Court. **State Ex Rel Chandler v. Ellis, Judge, 43 La. An., 825; State Ex Rel Chandler v. King, 43 La. An., 826, 827; State v. Sommerville, 112 La., 1091, 1095.**

Full Faith and Credit Clause of the Federal Constitution.

It is not only true, as shown in our brief on our motion to dismiss, that this asserted Federal question was raised

too late, and that it was not entertained and passed upon by the Supreme Court of Louisiana, but it is also true that plaintiff in error has not placed himself in a position to invoke the full faith and credit clause of the Federal Constitution.

Section 960 of the United States Revised Statutes provides that "the records and judicial proceedings so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken."

Plaintiff in error failed to plead in the Supreme Court of Louisiana the construction given the statutes of Tennessee by the Courts of Tennessee, or introduce in evidence the laws of that State as printed under the authority thereof, or a certified copy thereof, or introduce in evidence the printed books of cases adjudged in the State of Tennessee by which the Supreme Court of Louisiana could determine the faith and credit which the decision of the Probate Court of Shelby County, Tennessee, had, by law or usage in the Courts of Tennessee. **Lloyd v. Mathews, 155 U. S., 222.**

This Court will not take judicial notice of the decisions of the Courts or laws of one State in a case coming to it from Courts of another. **Eastern Building Association v. Williamson, 189 U. S., 122; Hanley v. Doneghan, 116 U. S., 1; Chicago and Alton Railroad Company v. Wiggins Ferry Company, 119 U. S., 615; Lloyd v. Mathews, 155 U. S., 222.**

Prima facie proof of the laws of other States is made in Louisiana by introducing in evidence the published

statutes of such other States (R. S., Sec. 1140), and in the absence of proof the statutes of such other States are presumed similar to the statutes of Louisiana **(Nolte v. Ventress, 19 La., 373)** which authorize a proceeding such as was apparently had in the Probate Court of Shelby County, Tennessee, only where a judgment of interdiction has been pronounced in a Louisiana Court and suit is brought in that same Court to "repeal" the judgment of interdiction. (See Article 420, R. C. C. of La., quoted in plaintiff's brief on merits, p. 17.)

There is no such thing in Louisiana as an original inquiry into a person's sanity followed by a judgment establishing sanity binding on the world inside and outside of Louisiana, and it is too plain for argument that a Court of one State cannot set aside the judgment of the Court of another State, and make such judgment effective by merely pleading the full faith and credit clause of the Constitution.

When Case No. 656 is reached in this Court in due course, we have no doubt of our ability to show that the Probate Court of Shelby County, Tennessee, was not possessed of such jurisdiction and power as is claimed to render judgment in favor of plaintiff in error on his **ex parte** application irrespective of prior proceedings in Tennessee, and that if by chance it had any such power, yet plaintiff in error, for many other good and sufficient reasons, could not be granted the relief sought by him in suit No. 656 of the docket.

We, therefore, respectfully ask that our motion to dismiss or affirm be granted and this cause be dismissed for

want of jurisdiction, or the judgment of the Supreme Court of Louisiana be affirmed.

Respectfully submitted,

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE,

Counsel for Defendants in Error.

MOTION TO DISMISS OR AFFIRM

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Supreme Court of the United States

No. 116.

OCTOBER TERM, 1916.

Fernand Vaughan Gasquet,
Plaintiff in Error,
versus
George F. Lapeyre and J. Martial Lapeyre,
Defendants in Error.

On Motion of Defendants in Error to Dismiss or Affirm.

Brief on Behalf of George F. Lapeyre and J. Martial Lapeyre, Defendants in Error, on Their Motion to Dismiss the Writ of Error, or Affirm the Judgment of the Supreme Court of Louisiana.

STATEMENT OF THE CASE.

Defendants in error brought suit in the Civil District Court of New Orleans to interdict Plaintiff in Error Gasquet, who was then domiciled in, and a citizen of

Louisiana (R., p. 2), and judgment of interdiction was pronounced against Gasquet (R., pp. 8 and 9).

Amongst other allegations of the petition for interdiction, it was stated (R., p. 4) that Gasquet had been indicted in the Criminal District Court of New Orleans for shooting with intent to murder; that the grand jury had refused to find a true bill on the ground of insanity, and thereupon the Criminal Court had committed Gasquet to the Asylum for the Criminal Insane until cured and of sound mind, but, because of lack of proper accommodations at the insane asylum, Gasquet had remained in the custody of the Criminal Sheriff of Orleans.

Gasquet appealed from the judgment of interdiction to the Supreme Court of Louisiana, and the appeal was argued November 4th, 1914 (R., p. 27).

On the same day, November 4th, 1914, before the argument, Gasquet filed in the Supreme Court of Louisiana what he termed a "Plea of res adjudicata" based upon proceedings had in the Court of Appeal of Orleans (an intermediate appellate Court) in which Gasquet had applied for a writ of habeas corpus, seeking his release from the custody of the Criminal Sheriff, and the Court of Appeal had released him from custody on the ground that he had recovered his sanity, and that it would no longer endanger the safety and peace of the community that he be restored to his liberty (R., p. 11-15).

Gasquet prayed that the Supreme Court of Louisiana maintain his plea of res adjudicata, annul, avoid and reverse the judgment of interdiction rendered by the

Civil District Court, and decree him to be sane and capable of taking care of his person and property (R., p. 14).

This plea of res adjudicata averred that if the judgment of the Court of Appeal were not given full effect, he would be deprived "of his liberty and property and status in society without trial by jury, without a judicial hearing, and without due process of law, in violation of **Amendments 5 and 14** of the Constitution of the United States" (R., p. 14).

The Supreme Court of Louisiana, on the 25th of January, 1915, pronounced its opinion and decree affirming the judgment of interdiction of the Civil District Court, and overruling the plea of res adjudicata, holding that the Court of Appeal had no jurisdiction, or authority, to set aside the judgment rendered by the Criminal District Court, and no jurisdiction of the subject matter of the interdiction of Gasquet (R., pp. 30 and 31). The suggested Federal questions were not passed upon.

On the 8th of February, 1915, Gasquet applied for a rehearing (R., p. 35), in which he invoked the protection of **Article 1, Section 9** of the U. S. Constitution, and on March 4th, 1915, while the application for rehearing was under consideration by the Court Gasquet filed a "Motion to abate and remand" (R., p. 40).

This motion to abate and remand was based upon a transcript of record in the Probate Court of Shelby County, Tennessee (R., p. 42, et seq.), exhibiting a petition filed by Gasquet in that Court on February 19th, 1915, in which petition he recited the aforesaid proceedings in the Civil District Court, Criminal District Court and Court of Appeal in New Orleans; his appeal to the

Supreme Court of Louisiana from the judgment of the Civil District Court interdicting him; the affirmance by that Court of the judgment of interdiction; that he had applied to the Supreme Court of Louisiana for a rehearing; that his application for a rehearing was then pending; that immediately upon his release from custody by the habeas corpus proceedings he had left the State of Louisiana, and gone to Memphis on July 24th, 1915, to make that city his permanent place of residence, and was then a permanent resident thereof; that he was, at the time of the habeas corpus proceeding, and was then, of sound mind capable of controlling himself, and always had been; and he prayed that the Court order the summoning of a jury of twelve freeholders to ascertain by inquisition the condition of his mind and make return thereof to the Court for such relief as might be warranted by law.

Upon the filing of the above petition the Judge of the Probate Court of Shelby County, Tennessee, ordered that a jury be summoned as prayed for, and the jury was summoned and found that Gasquet was of "sound mind and had sufficient capacity for the government of himself and property" and the Court rendered judgment accordingly.

Upon the faith of the above proceedings in, and judgment of, the Probate Court of Shelby County, Tennessee, Gasquet moved that the proceedings in the Supreme Court of Louisiana "be abated and dismissed, or that they be remanded to the Civil District Court of the Parish of Orleans with such instructions from this Court as may be necessary to that end."

The motion to "abate and dismiss or remand" set up that the judgment of the Tennessee Court was entitled to full faith and credit under Section 1 of Article 4 of the Constitution of the United States, and was conclusive of Gasquet's mental condition and ability to take care of himself and his property (R., p. 41).

This motion to abate and remand was not taken contradictorily with the present defendants in error, plaintiffs in the suit, and no notice thereof was given them.

On the 22nd day of March, 1915, a rehearing was refused, and on the same day the motion to abate and remand was denied, without any opinion or the assignment of any reasons in either case (R., p. 50). The Court did not pass upon the Federal question suggested.

Gasquet thereupon, on the 30th day of March, applied for, and was allowed a writ of error to this Court by the Chief Justice of Louisiana (R., pp. 52 and 53).

Gasquet assigns as error (R., p. 54):

1st. That the Court erred in refusing to give effect to the judicial proceedings in the Probate Court of Shelby County, Tennessee, and that to deny full faith and credit to said judicial proceedings was a violation of Section 1, Article 4, of the Constitution of the United States—the full faith and credit clause.

2nd. That the Court erred in reversing and setting aside the judgment of the Court of Appeal of New Orleans in the habeas corpus proceedings, and "has thereby deprived Gasquet of his liberty, status in society and vested rights without due process of law and equal protection of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States."

3rd. That the effect of the judgment of the Supreme Court declining to give effect to the judgment of the Court of Appeal of New Orleans and the effect of the judgment of the Supreme Court reversing and setting aside the judgment of the Court of Appeal is to suspend the privilege of the writ of habeas corpus guaranteed under Section 9 of Article 1 of the Constitution of the United States.

The transcript of record of the proceedings in the Probate Court of Shelby County, Tennessee, makes no reference to the law of Tennessee authorizing an extraordinary proceeding whereby a presumably sane man, who has not been pronounced insane in Tennessee, may make an application to one of its Courts for an ex parte finding, binding on all the world, that he is of sound mind and capable of taking care of his person and property. The "motion to abate, dismiss and remand" filed in the Supreme Court of Louisiana simply says (R., p. 41) that it was had "in accordance with sections of the Revised Laws of the State of Tennessee."

The statute of Tennessee under which the proceedings were instituted was not filed in the Supreme Court of Louisiana, nor offered in evidence in that Court; the presumption, therefore, is that it was similar to our own law **(19 La. An., 373, Nolte v. Ventress)**, which provides a proceeding to set aside a judgment of interdiction rendered by a Court of Louisiana and the resumption of the interdict's rights only after definitive judgment repealing the interdiction **(R. C. C., 420, 421)**, but provides no ex parte proceeding to test any man's sanity.

Articles 420 and 421 of the Revised Civil Code read as follows:

> "Art. 420 (407). Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced.
>
> "Art. 421 (408). Interdiction can only be revoked by the same solemnities which were observed in pronouncing it."

ARGUMENT.

It appears, therefore, from the foregoing statement of facts, borne out by the record, that none of the Federal questions assigned as error was considered or passed upon by the Supreme Court of Louisiana, and that its decision was based upon grounds broad enough to sustain it and which this Court has no jurisdiction to review.

FIRST.

The first assignment of error (R., p. 54), that full faith and credit had not been given to the judgment of the Probate Court of Shelby County, Tennessee, in violation of Section 1, Article 4 of the Constitution of the United States will not be considered by this Court be-

cause the asserted Federal question was raised too late, and was not entertained or passed upon by the State Court of last resort.

This asserted Federal question was raised after the judgment of the Supreme Court of Louisiana (the Court of last resort) had been rendered, and was not entertained or passed upon by that Court.

The Record shows (p. 28) that the judgment of the Supreme Court of Louisiana was rendered January 25th, 1915; that Gasquet applied for a rehearing February 8th, 1915 (R., p. 35); that it was only on February 19th, 1915, that Gasquet began his proceedings in the Probate Court of Shelby County, Tennessee; that the judgment of the Shelby County Court was rendered February 20th, 1915 (R., p., 48); that the motion to "abate and dismiss or remand," raising the Federal question, was filed March 4, 1915 (R., pp. 40 and 42); that the rehearing was refused, and motion raising the Federal question denied on March 22nd, 1915, without any opinion or assignment of reasons; the entry with reference to the motion being that it was "denied" (R., p. 50).

That the Federal question was raised too late is well settled.

In **225 U. S., 326, Consolidated Turnpike Company v. Norfolk and Ocean View Railway**, this Court said, on page 333:

> "Upon a petition for rehearing filed in the Supreme Court, one of several grounds stated was, that a decree taking the land in question without compensation for the improvements thereon would be 'a taking without due process of law in

violation not only of the Constitution of Virginia, but of the Fourteenth Amendment to the Constitution of the United States.' This application was refused, without opinion, the judgment entry being in these words:

"'The Court having maturely considered the petition aforesaid, the same is denied.'

"The words 'maturely considered' do not impart any decision of the question made. Just such an entry has been held to be no more than a refusal to rehear the case. **Forbes v. State Council, 216 U. S., 396.**

"Nothing is better settled than that it is too late to raise a Federal question for the first time in a petition for a rehearing, after the final judgment of the State Court of last resort. If, however, the State Court actually entertains the petition and decides the Federal question, and this appears by the record, the requirement of **Section 709** that the right shall be specifically set up and denied is complied with. **McCorquodale v. Texas, 211 U. S., 432; Mallet v. North Carolina, 181 U. S., 589; McMillen v. Mining Company, 197 U. S., 343, 347.**"

Apart from the late date upon which the issue was raised, it is quite apparent that the asserted Federal question is entirely devoid of merit and frivolous. The judgment of the Supreme Court of Louisiana had been rendered when the proceedings were instituted by Gasquet in the Tennessee Court. The attempt was to avoid the effect of the Louisiana judgment, and to divest the Louisiana Court of jurisdiction, which was unquestioned. It was an attempted denial of full faith and credit to the Louisiana judgment.

Moreover, the statutes of Tennessee under which the proceedings in the Probate Court of Shelby County were conducted, not having been offered in evidence, and filed in the Supreme Court of Louisiana, and the presumption being, in the absence of evidence, that the Tennessee law was similar to the Louisiana law, the jurisdiction of the Tennessee Court was limited to a proceeding to set aside a judgment of interdiction theretofore pronounced by a Tennessee Court, and it had no power to enter into an ex parte inquiry into the sanity of Gasquet, whose sanity had not been attacked in a Tennessee Court, or to entertain a proceeding the purpose of which was to set aside and revoke a judgment of a Court of a sister State, which was itself entitled to the full faith and credit invoked by Gasquet for his anomalous judgment **(R. C. C. of La., 420, 421; Nolte v. Ventress, 19 La. An., 373.)**

We have no doubt that the Tennessee statute really went no further than the Louisiana statute, for such a proceeding as claimed here, would be an anomaly, the presumption in favor of sanity being universal.

Whatever effect the judgment of the Tennessee Court might be given within the State of Tennessee, it is manifest that it could not affect any property of Gasquet in the State of Louisiana, or any proceeding against him in Courts of Louisiana having unquestioned jurisdiction over him when the proceedings were instituted.

The demand of Gasquet was, in effect, that the Supreme Court of Louisiana should set aside its judgment and that of the District Court, and substitute the judgment of the Court of Tennessee, because, since the institution of the proceedings in Louisiana Gasquet had gone

into another State and secured an ex parte judgment finding him sane.

The Courts of Tennessee could not reverse, or overrule, or affect judgments of the Courts of Louisiana, or proceedings in its Courts. The State of Louisiana is sovereign and the judgments of her Courts are beyond question, except in such cases as are reviewable by this Court under the Constitution of the United States.

Articles 420 and 421 of the Revised Civil Code of Louisiana provide for the revocation of a judgment of interdiction when the causes which gave rise to it no longer exist, and provide a speedy and adequate remedy, open to Gasquet, when he began his anomalous suit in Tennessee, and still open to him at this day.

SECOND.

The Second Assignment of Error, that "in reversing and setting aside the judgment of the Court of Appeal for the Parish of Orleans in the habeas corpus proceedings," the Supreme Court of Louisiana has "thereby deprived petitioner of liberty, status in society and vested rights, without due process of law, and equal protection of law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States" is also devoid of all merit and therefore frivolous.

The Supreme Court of Louisiana did not "reverse and set aside the judgment of the Court of Appeal of Orleans in the habeas corpus proceeding, and deprive Gasquet of his liberty, etc.," it simply refused to give the

judgment of the Court of Appeal the force and effect claimed for it by Gasquet, because it was not entitled to such force and effect under the Constitution and laws of Louisiana.

As shown by his motion to abate, etc. (R., pp. 40-50, and affidavit, p. 53) Gasquet is at liberty, beyond the bounds of Louisiana, and claims to be now a permanent resident of Tennessee.

This is what the Supreme Court of Louisiana said of the judgment of the State Court of Appeal (R., pp. 30 and 31):

> "The Court of Appeal had no jurisdiction or authority to revoke or set aside the judgment rendered by the Criminal District Court committing Mr. Gasquet to the state asylum for the criminal insane; nor had the Court of Appeal jurisdiction of the subject matter of the interdiction of Mr. Gasquet. Although Article 104 of the Constitution provides that the Courts of Appeal and each of the Judges thereof shall have power to issue the writ of habeas corpus at the instance of any person in actual custody, it does not follow that after issuing such writ, the Court may go on and exercise unlimited jurisdiction. Under Article 85 of the Constitution, the jurisdiction of the Supreme Court extends to suits for interdiction. And Article 98 provides that the jurisdiction of the Courts of Appeal shall extend to all cases, civil and probate, of which the Civil District Court of the Parish of Orleans or the District Courts throughout the State have exclusive original jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed two thousand dollars, exclusive of interest.

> "The commitment rendered by the Criminal District Court in consequence of the criminal prosecution of Mr. Gasquet was not a judgment of interdiction, nor do the plaintiffs contend that it was. Hence, if the Court of Appeal had authority to set aside the commitment of the Criminal District Court and release Mr. Gasquet from the custody of the Criminal Sheriff, the judgment of the Court of Appeal would, nevertheless, have no effect upon the judgment of interdiction rendered by the Civil District Court in this suit."

The question presented to the Supreme Court of Louisiana by Gasquet's "plea of res adjudicata" (R., pp. 11 et seq.), involved a construction of the Constitution and laws of the State of Louisiana in reference to State Courts, and Gasquet's claim that a construction different from that contended for by him violates the Fifth and Fourteenth Amendments to the Constitution of the United States requires no further argument than the mere statement of the proposition to demonstrate its unsoundness.

The Supreme Court of Louisiana is the Court of last resort of the State, and the Court of Appeals for the Parish of Orleans is an intermediate appellate Court subordinate to the Supreme Court (Constitution of Louisiana, Articles 84, 85, 98, 131).

As the highest Court of Louisiana, the decisions of its Supreme Court on questions involving a construction of its Constitution and laws in reference to State Courts are binding upon this Court.

> "But it is equally well settled that it is for the Supreme Court of a State finally to determine its

> own jurisdiction, and that of other local tribunals, since the decision involves a construction of the laws of the State by which the Court was organized. **Standard Oil Company v. Missouri, 224 U. S., 281; Iowa City Ry. v. Iowa, 160 U. S., 389.**"

To state and answer the question put by this Court:

> "Was any title, right, privilege or immunity under the Constitution or any statute or authority exercised under the United States, specially set up and claimed by plaintiff in error, denied by the decision of the State Court?" **Missouri Pacific Railway Co. v. Fitzgerald, 160 U. S., 556, 574.**

Manifestly not. Plaintiff in error set up that the judgment of the State Court of Appeals was decisive of his sanity, constituted res adjudicata, and if not given full effect would deprive plaintiff in error of his liberty, etc., without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States, and the Supreme Court of Louisiana held that the Court of Appeals was without jurisdiction under the Constitution and laws of Louisiana to pass on Gasquet's sanity, that such jurisdiction was vested only in the District Courts and Supreme Court of Louisiana.

The asserted Federal question was not considered or passed upon, and the decision was based upon a ground broad enough to sustain it, and which this Court has no jurisdiction to review.

In **Eustis v. Bolles, 150 U. S., 361, 366,** this Court said:

> "It is settled law that, to give this Court jurisdiction of a writ of error to a State Court, it must

appear affirmatively, not only that a Federal question was presented for decision by the State Court but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. **Murdock v. Memphis, 20 Wall., 590; Cook County v. Calumet & Chicago Canal Company, 138 U. S., 635.**

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has also been raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this Court will not review the judgment."

To the same effect: **Missouri Pacific Railway Company v. Fitzgerald, 160 U. S., 556; Chappel Chemical Company v. Sulphur Mines Company, 172 U. S., 465, 471,** and authorities there cited; **Rutland Railroad Company v. Central Vermont Railroad, 159 U. S., 630, 641; Gillis v. Stanchfield, 159 U. S., 658; New Orleans and Northeastern Railroad Company v. National Rice Milling Company, 234 U. S., 80.**

This Court said in the case of **Parker v. McLain:**

"Our jurisdiction to review the judgment of the highest Court of a State turns upon whether a Federal right was specially set up or claimed in that Court and denied by its decision. Judicial Code

> Section 237. And to be effective for this purpose the assertion of a Federal right must not be frivolous or wholly without foundation. It must at least have fair color of support, for otherwise an utterly baseless Federal right might be set up or claimed in almost any case, and the jurisdiction of this Court invoked merely for purposes of delay." **Parker v. McLain, 237 U. S., 469, 471.**

In the face of the record, which shows an orderly proceeding under admittedly valid laws of Louisiana, in Courts where jurisdiction is not questioned, conducted contradictorily with plaintiff in error, Gasquet, bitterly contested by him in the lower Courts and Court of last resort of Louisiana; in which he has been afforded and has fully exercised his right to be heard and has been fully heard, and has not been denied any privilege or right granted by law, it is apparent that the claim of a denial of due process of law and equal protection of law is so frivolous and utterly baseless as to make it unnecessary to refer to any of the many decisions of this Court dealing with the Fourteenth Amendment.

The apparent contention of plaintiff in error being that the Fourteenth Amendment has been violated because the Supreme Court of Louisiana has, in his opinion, decided erroneously, we content ourselves with referring to **Central Land Company v. Laidly, 159 U. S., 103, 112.**

As to the asserted violation of the Fifth Amendment of the Constitution of the United States, it is sufficient to say that the first eight Articles of Amendment to the Constitution of the United States have reference only to powers exercised by the United States, and not those exercised by the States. **Eilenbecker v. District Court of**

Plymouth County, 134 U. S., 31; Winous Point Shooting Club v. Casperseu, 193 U. S., 189, 191.

In the answer of Gasquet to the petition for interdiction filed in the State District Court (R., pp. 7 and 8, par. VI and X) he set up that the judgment of the Criminal District Court committing him to the Asylum for the Criminal Insane violated the **Fifth and Fourteenth Amendments** of the Federal Constitution and the allegations of the answer to that effect were referred to and copied in the plea of res adjudicata (R., p. 13) and the Supreme Court of Louisiana in its opinion (R., p. 30), said that the provisions of the law of Louisiana which authorized the Criminal District Court to render the judgment committing Gasquet to the Asylum for the Criminal Insane did not "deprive a person of his liberty without due process of law, which means due notice and opportunity to be heard," but this expression of opinion had nothing to do with the asserted violation of those Amendments set forth in the petition for writ of error and assignment of errors (second assignment R., p. 54; petition p. 52) in which the claimed violation is confined to the asserted error of the Supreme Court "in reviewing and setting aside the judgment of the Court of Appeal in the habeas corpus proceedings."

None of the violations of the Constitution of the United States claimed in the petition for writ of error and assignment of errors, was referred to in the opinion of the Supreme Court of Lousiana, which is based entirely upon State law, and upon considerations and evidence having nothing to do with the judgment of the Criminal District Court (R., p. 31).

Besides, as has already been stated, Gasquet is at liberty by reason of the habeas corpus proceedings which have released him from the commitment to the Insane Asylum by the Criminal District Court, and the lawfulness or unlawfulness of that commitment is a moot question insofar as this suit for his interdiction is concerned.

THIRD.

The third Assignment of Error that the effect of the judgment of the Supreme Court of Louisiana, declining to give effect to the judgment of the State Court of Appeal, and reversing and setting aside said judgment is to suspend the privilege of the writ of habeas corpus granted under Section 9 of Article 1 of the Constitution of the United States cannot be considered because not made in the State Court previous to the petition for rehearing and petition for writ of error and assignment of errors and besides is wholly devoid of merit and frivolous.

The plea of res adjudicata filed by plaintiff in error in the Supreme Court of Louisiana (R., pp. 11-15) sets up violation of the Fifth and Fourteenth Amendments of the Federal Constitution but does not make any claim of violation of Article 1, Section 9 of the Federal Constitution with reference to suspension of privileges of writ of habeas corpus.

Violation of Article 1, Section 9 of the Federal Constitution was first claimed in the petition for rehearing, paragraph II (R., p. 36); then in the petition for writ of

error (R., p. 52) and finally in the assignment of errors (R., p. 54.)

As decided in **Consolidated Turnpike Company v. Norfolk and Ocean View Railway, 225 U. S., 323,** and other cases hereinabove referred to, it is too late to raise a Federal question in a petition for rehearing, and not having been entertained and passed upon by the State Supreme Court, the requirement of Section 709 R. S., that the right shall be specifically set up and denied has not been complied with and this Court will not consider the asserted Federal question.

That a Federal question cannot be first raised in a petition for writ of error or assignment of error is also settled, in **Mallers v. Commercial Loan and Trust Co., 216 U. S., 613; Hulbert v. Chicago, 202 U. S., 275; Corkran Oil Company v. Arnaudet, 199 U. S., 182 193; Winous Point Shooting Club v. Casperseu, 193 U. S., 189, 191; New York Central Railroad v. New York, 186 U. S., 269, 273; Arkansas v. Schlierholz, 179 U. S., 598, 601; Leeper v. Texas, 139 U. S., 462, 467.**

Section 9 of Article 1 of the Constitution of the United States has no reference to State action or powers, it deals alone with powers denied to the United States.

Moreover, suppression of the **privilege** of the writ of habeas corpus is a legislative power and no exercise of legislative power is complained of. **Ex Parte Merriman, 1 Taney, 246.**

This assignment of error erroneously states the action of the Supreme Court with reference to the habeas corpus proceedings in the State Court of Appeal. The Supreme Court did not reverse and set aside the judgment

of the Court of Appeal. Gasquet has been, and is, at liberty since the Court of Appeal released him, and is now in Memphis. What the Supreme Court decided was that the Court of Appeal had acted beyond its jurisdiction and that under the Constitution and laws of Louisiana it had no jurisdiction whatsoever over matters of interdiction; that jurisdiction of interdiction cases was by the Constitution and laws of Louisiana vested solely in the District Courts and Supreme Court of Louisiana.

CONCLUSION.

Because the first and third Assignments of Error were raised too late, and they as well as the Second Assignment of Error were not considered or passed upon by the Supreme Court of Louisiana, whose decision is founded upon a construction of the Constitution and laws of Louisiana, a ground broad enough to sustain the judgment irrespective of any Federal question, and because the Federal questions asserted are in themselves wholly wanting in substance and therefore frivolous. We respectfully submit that the writ of error should be dismissed for want of jurisdiction, or that if the writ of error shall not be dismissed, that the judgment of the Supreme Court of Louisiana should be affirmed, although in the opinion of the Court the record might show that this Court has jurisdiction, and that the asserted Federal questions are not purely frivolous, be-

cause it is manifest that they are of such unsubstantial character as to be devoid of all merit and therefore frivolous and taken for delay.

Respectfully submitted,

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE.

Of counsel for

Defendants in Error.

October, 1916.

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE and J. MARTIAL LAPEYRE,
Defendants in Error.

Writ of Error to Supreme Court of Louisiana.

On Motion of Defendants in Error to Dismiss or Affirm.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

STATEMENT AND ARGUMENT.

A motion has been made to consolidate the cases of *Fernand Vaughan Gasquet vs. George F. Lapeyre and J. Martial Lapeyre*, No. 116, October Term, 1916, and *Fernand*

Vaughan Gasquet vs. Chas. Payne Fenner, Testamentary Executor, and Mrs. Evelyn Gasquet Fenner and Mrs. Martha Gasquet Westfeldt, No. 656, October Term, 1916, on the ground, substantially, that the issues in both cases are identical. This motion was submitted in open court on October 23, 1916, and is at present under advisement.

The motion to dismiss filed by defendants in error in Case No. 116 is made on purely technical grounds, applicable to the character of cases cited, but a proceeding for interdiction, seeking to deprive a party of his civil rights and status in society, is *sui generis* and not to be tested by the general law. The defendant was at liberty at all times to show his recovery during the proceeding. An interval of about ten months elapsed between the judgment of the trial Court and the final judgment of the Supreme Court of Louisiana, during which time it is argued Gasquet's hands were completely tied. It must be borne in mind that the Louisiana judgment relates to a period in May, 1914. In the very nature of the case, it was imperative for the Supreme Court of Louisiana to receive the evidence of Gasquet's return to competency, or to remand the case to the trial court. It might very well be that the day following a judgment of interdiction the defendant might no longer be incompetent, and to hold that he can be kept for ten months under the cloud of an interdiction proceeding because he can offer no evidence is indeed a considerable hardship upon him. The Civil Code of Louisiana, Article 396, expressly recognizes the power of the Supreme Court to receive original evidence in interdiction proceedings. The cases cited by defendants in error are one and all conclusively with property rights as to which the evidence in the nature of things was all in existence and available at the time of the

trial of the case, and any failure to produce the proof necessary to sustain the defense is attributable to laches; but in the case of a mental condition there are changes that are possibly occurring continually, which Courts are bound to recognize and hear until the case is finally determined.

We respectfully submit that the motion to dismiss filed herein be disallowed.

J. C. GILMORE,
EDWARD N. PUGH,
WM. WINANS WALL,
THOS. GILMORE,
Of Counsel for Plaintiff in Error.

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Supreme Court of the United States

OCTOBER TERM, 1916.

No. 116.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE.

In Error to the Supreme Court of the State of Louisiana.

Brief on Behalf of Plaintiff in Error.

SYLLABUS.

Where the subject of an interdiction suit removes permanently from the State where such suit is pending

to another State, with the intention of remaining permanently in the State to which he removes and becoming a citizen of said State, and by proceedings had before a competent Court having jurisdiction of his person and domicile has been pronounced sane and capable of managing his property, the effect of such removal and such proceedings is to abate the suit pending for his interdiction in the State from which he has removed.

In Louisiana, it has been held that the death of the subject of an interdiction suit, while the appeal is pending before the Supreme Court of that State, abates the suit.

In re Lambert, 115 La., 86; In re Jones, 117 La., 106.

Where the subject of an interdiction suit removes permanently from the State and becomes a citizen of another State and is pronounced sane by a Court of competent jurisdiction and a citizen of the State to which he has removed, he is as completely eliminated, insofar as being subject to the control of the Court in which the interdiction proceedings are pending, as though he were dead.

Under the Constitution of the United States, each State of the United States regulates the status of its own citizens, and their status, as recognized by the States of their citizenships, attaches to them in every other State.

Art. 4, Sec. 2, of the Federal Constitution; Woodward v. Woodward, 87 Tenn, 11 S. W., Rep., 892, and authorities therein cited.

Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.

Art. 4, Sec. 1, Constitution of the United States.

STATEMENT OF THE CASE.

Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner; Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized by their husbands, and George F. Lapeyre and J. Martial Lapeyre, the two former being sisters, and the two latter the uncles, of Fernand Vaughan Gasquet, brought suit, on November 13th, 1913, in the Civil District Court, Parish of Orleans, State of Louisiana, alleging that said Fernand Vaughan Gasquet was then domiciled in the City of New Orleans; that, owing to infirmities, he was incapable of taking care of his person or administering his property, and that, therefore, it was advisable and necessary that he be interdicted in accordance with law (Tr., p. 2).

Exceptions of vagueness and no cause of action were filed to the petition on November 24th, 1913 (Tr., p. 3), and on December 23rd, 1913, the plaintiffs filed a supplemental and amended petition, in which the allegations of the original petition were reiterated, and in addition it was alleged that: Said Fernand Vaughan Gasquet was subject to a habitual state of insanity and madness, although he, at times, while under the influence of narcotic drugs, appeared to have possession of his reason; that in proceedings entitled "State of Louisiana v. Fernand V. Gasquet," No. 40,089 of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indict-

ment of said Fernand Vaughan Gasquet for shooting with intent to murder one Isaac Broad, otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912; that, thereupon, the District Attorney for the Parish of Orleans instituted proceedings to have Fernand Vaughan Gasquet committed to the ward for the criminal insane at Jackson, La., because his going at large was dangerous to the safety of the citizens and the peace of the State of Louisiana; that after hearing said Fernand Vaughan Gasquet was duly committed to the Louisiana State Asylum for the Criminal Insane; that for lack of proper accommodations, said Fernand Vaughan Gasquet had remained in the custody of the Criminal Sheriff for the Parish of Orleans, and was at that time held in such custody; that said Fernand Vaughan Gasquet was addicted to the abuse of alcohol and addicted to narcotics, that he had a psychopathic constitution and hardening of the arteries due to nephrites affecting his mental condition and suffered from delusions; that said Fernand Vaughan Gasquet was incapable of taking care of his person, or administering his property, and that it was advisable and necessary that he be interdicted in accordance with law (Tr., pp. 4, 6).

Fernand Vaughan Gasquet then filed an answer, in which he denied the allegations of the original petition, admitted all of the allegations of the supplemental and amended petition, with respect to the criminal proceedings, and denied all other allegations of the supplemental and amended petition.

For further answer to the original petition, he admitted that he was in the habit of taking small quanti-

ties of morphine for the purpose of allaying physical pain, under the direction of a competent and reputable physician of the City of New Orleans, but not in such quantities as to impair or affect his mind and render him incapable of taking care of his person or administering his property; and that he was in full possession of all his mental and physical faculties and fully capable of taking care of his person and administering his property.

An attack was made in **Paragraph X** upon the article of the **Revised Statutes**, providing for his commitment, in the following words:

> "That **Article 993 of the Revised Statutes** of the State of Louisiana is absolutely null, void and of no effect, because, under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said article of the Revised Statutes provides for giving effect to the **ex parte** finding of an inquisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution" (Tr., pp. 6, 8).

The case was duly tried in the Civil District Court for the Parish of Orleans, and judgment was rendered as follows:

> "This cause having been argued and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being duly advised,

and by reason of the law and the evidence in favor of plaintiffs and against defendant, and for the reasons orally assigned;

"It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; cost of this proceeding to be paid out of the estate of said defendant" (Tr., pp. 8, 9).

An appeal was taken to the Supreme Court of Louisiana on June 19th, 1914.

On the 30th day of June, 1914, Fernand Vaughan Gasquet, the plaintiff in error, presented a petition for a writ of **habeas corpus** to the Court of Appeal for the Parish of Orleans, in which he charged the unconstitutionality of the article of the **Revised Statutes, No. 993**, and its repeal by Act 253 of 1910 of the General Assembly for the State of Louisiana, and that Act 264 of the Session of 1910 provided, in terms, only for the commitment of persons already convicted of crime to the ward for the criminal insane at the State Asylum for the Insane, and that as he, plaintiff in error, had never been convicted of any crime, his commitment to the ward for the criminal insane was, therefore, invalid.

The constitutionality of Act 264 of 1910, and particularly Section 4 thereof, was assailed as being unconstitutional, null and void and in violation of the bills of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution, in that said act provides that when any person charged with a felony necessarily

punishable in the State penitentiary, or by death, has been adjudged insane, before or after trial or conviction, and shall be committed to a State hospital for the insane, such person shall not be discharged from said hospital for the insane or delivered into the custody of the proper Sheriff until the Superintendent of the East Louisiana Hospital for the Insane of the State of Louisiana, the Superintendent of the Louisiana Hospital for the Insane, and in case of their disagreement, a physician appointed by the Judge of the District Court from whence said criminal insane person was committed, which said gentlemen are hereby constituted as a commission, shall be satisfied, after a thorough examination, that such person has been completely restored to sanity and may be discharged without danger to others; that the said provisions of the said act leave a person committed to said asylum entirely at the mercy of the said parties who are vested with exclusive authority to certify to his sanity **vel non**, and deprive the said person committed to the said asylum of a judicial hearing, due process of law and trial by jury, in violation of the State Constitution and Amendments 6 and 14 of the Federal Constitution. Furthermore, that said act is unconstitutional, because it delegates judicial powers in violation of Article 96 of the State Constitution, and the further allegation was made that the said Fernand Vaughan Gasquet was harmless and his going at large would not constitute a menace or be dangerous to the public safety (Tr., pp. 15, 17).

After hearing, on July 7, 1914, by a full Court, the Court of Appeal for the Parish of Orleans, handed down the following judgment:

"In June, 1912, the relator was committed to the State Insane Asylum by the Criminal District Court, under **Sec. 993, R. S.**, on the ground that he was then in such mental condition as to constitute a menace to the safety of citizens and the peace of the State. This commitment was, however, never carried out and he is still in the custody of the Criminal Sheriff of Orleans Parish.

"He now applies to this Court for his release by **habeas corpus** on the ground that those conditions no longer exist, that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.

"The only evidence adduced fully establishes his contention; there is no evidence whatever to the contrary.

"**Under Art. 104, Constitution of 1913**, this Court has the power to issue the writ of **habeas corpus** in such cases, that is 'at the instance of any person in actual custody' within this circuit.

"**Art. 822, par. 2, and Art. 824, Code of Practice**, authorize the release of the relator under the circumstances; that is to say when the change in conditions renders the confinement no longer necessary or legal.

"It is therefore ordered that the writ of **habeas corpus** issued herein be made peremptory; and accordingly that the relator, Fernand Vaughan Gasquet be discharged and released from custody forthwith." (Tr., pp. 26, 27).

Immediately upon being released from custody, said Fernand Vaughan Gasquet removed permanently from the State of Louisiana to the State of Tennessee with the intention of becoming a citizen of that State, and domiciled himself in the City of Memphis.

On the 4th day of November, 1914, the proceedings had in the Court of Appeal for the Parish of Orleans were brought to the attention of the Supreme Court of Louisiana, by the filing of a plea of **res adjudicata** and estoppel (Tr., pp. 11, 14).

On November 4th, 1914, the case was argued and submitted to the Supreme Court of Louisiana.

On January 25th, 1915, the Supreme Court of Louisiana handed down an opinion and decree, affirming the judgment of the Civil District Court of the Parish of Orleans, interdicting said Fernand Vaughan Gasquet.

On February 8th, 1915, a petition for a rehearing was filed in the Supreme Court of Louisiana, within the delay allowed by law within which such application could be made, and while the application for a rehearing was pending, on February 20th, 1915, Fernand Vaughan Gasquet, who was then a citizen of Tennessee and a resident of the City of Memphis, filed suit in the Probate Court of Shelby County, Tennessee, a competent Court with jurisdiction over the county in which he resided, in pursuance of the law of Tennessee, and after full disclosure of all of the Louisiana proceedings had, the Court ordered the empaneling of a jury to inquire into his sanity.

On February 22nd, 1915, the jury was empaneled, testimony taken and a verdict and judgment rendered, decreeing Fernand Vaughan Gasquet to be of sound mind and of sufficient capacity for the government of himself and his property, and that he had been since July 24th, 1914, a resident and citizen of the County of Shelby and State of Tennessee (Tr., pp. 42, 51).

On March 4th, 1915, while the petition for a rehearing was still pending, Fernand Vaughan Gasquet presented a motion to the Supreme Court of Louisiana, in which he suggested to that Court that he was no longer a citizen of the State of Louisiana; that he had removed his citizenship to the State of Tennessee, where he had been pronounced by a verdict of a jury and a judgment of a Court of competent jurisdiction sane and of full capacity to take care of his person and property, and that by reason of that judgment, evidencing his complete restoration to sanity, under the full faith and credit clause of the Constitution of the United States, the proceedings for his interdiction should be abated and dismissed by the Court, or the whole matter remanded to the Civil District Court of the Parish of Orleans, with proper instructions to that end (Tr., pp. 40, 42).

The motion to abate or dismiss was denied on March 22nd, 1915. and a rehearing refused on that date.

On March 30th, a writ of error, to act as a **supersedeas**, was granted to this Court by the Chief Justice of the Supreme Court of Louisiana.

There was filed in the Supreme Court of Louisiana the following assignment of errors:

ASSIGNMENT OF ERRORS.

"First. That in this cause there is drawn in question the validity of the judicial proceeding

of another State, and full faith and credit has not been given by this Honorable Court to said judicial proceeding, and the rights therein adjudicated to petitioner have been denied him, in violation of Section 1 of Article 4 of the Constitution of the United States.

"Second. That in a **habeas corpus** proceeding, legally and properly tried by the Court of Appeal for the Parish of Orleans, in accordance with Article 104 of the Constitution of the State of Louisiana, subsequent to the judgment of interdiction rendered by the Civil District Court in this case, said Court of Appeal for the Parish of Orleans adjudged petitioner to be sane, and this Court, without having said judgment of the Court of Appeal for the Parish of Orleans before it, by writ of **certiorari** or review, in accordance with Article 101 of the Constitution of Louisiana, being the only method by which the Supreme Court of Louisiana is authorized to review judgments of the said Court of Appeal for the Parish of Orleans, has reversed, nullified and set aside said judgment of the Court of Appeal for the Parish of Orleans, and has thereby deprived petitioner of his liberty, status in society and vested rights, without due process of law and equal protection of the law, in violation of the 5th and 14th amendments of the Constitution of the United States.

"Third. That the effect of the reversal and annulment of the said judgment of the Court of Appeal for the Parish of Orleans is to suspend the writ of **habeas corpus** guaranteed to citizens of the United States, under Article 1, Section 9, of the Constitution of the United States" (Tr., p. 52).

MOTION TO CONSOLIDATE.

On April 3rd, 1915, Fernand Vaughan Gasquet's estate in Louisiana, consisting of an interest in his mother's succession, worth approximately $200,000.00, being in the custody of the testamentary executor of his mother's succession and the Civil District Court of the Parish of Orleans, State of Louisiana, filed a bill of complaint in the United States District Court in and for the Eastern District of Louisiana, New Orleans Division, in which he alleged himself to be a citizen of Tennessee and **sui juris**, and claimed the right to an accounting from Charles Payne Fenner, the testamentary executor of his mother's succession, and the husband of one of the plaintiffs in the interdiction suit, and a partition of the succession between himself and Mrs. Eveline Gasquet, wife of Charles Payne Fenner, and Mrs. Martha Gasquet, wife of George G. Westfeldt, both of whom were plaintiffs in said interdiction suit (Tr. No. 656, pp. 1, 4).

The bill of complaint was answered, and in the answer it was denied that Gasquet was a citizen of the State of Tennessee, and it was averred that he was a citizen of the State of Louisiana, with his domicile at New Orleans, and the right to the relief asked was denied by the defendants on the ground that Gasquet did not have capacity to demand a partition of the estate and the delivery to him of his share of the estate or an accounting from the testamentary executor of his mother's succession, by reason of the interdiction proceedings against him in Louisiana (Tr. No. 656, pp. 4, 7).

On the trial of the case it was shown by the production of the proceedings had in the Probate Court of Shelby County, Tennessee, under the laws of Tennessee, which were offered in evidence, that Gasquet had been pronounced sane by a Court of competent jurisdiction in Tennessee, where he resided and had resided for a long time previous to the filing of the proceedings, that he was a citizen of the State of Tennessee, and fully capable of taking care of his own person and property, and it was contended that that Court, being vested with jurisdiction of Gasquet's person and with jurisdiction to render the judgment, such a judgment was conclusive evidence in Louisiana, under the full faith and credit clause of the Constitution of the United States, of the fact that he was **sui juris** and a citizen of the State of Tennessee, and that being such, he was entitled in Louisiana, under the Federal Constitution, to all the rights, privileges and immunities in Louisiana of a citizen of Louisiana, and that as a citizen of Louisiana and **sui juris** had the right to the possession and administration of his property, he, a citizen of Tennessee, was entitled in Louisiana to the same right.

The contention in that case, No. 656 of the docket of this Court, was rejected and an appeal taken to this Court, which is now pending under the said No. 656, **and the transcript has been printed.**

The two cases really constitute one, and in order to avoid engendering a state of confusion, a motion was presented to this Court, which has not been disposed of, to advance the case No. 656, and consolidate it with this case (No. 116).

Under the relief asked by the motion to consolidate, we apprehend it would be entirely within the power of this Court to consolidate the two cases under the No. 656, if the Court should come to the conclusion that it would be expedient to do so.

If the two cases are not disposed of together, the effect of deciding this case (No. 116) now, against plaintiff in error, would simply be to subject the estate of Fernand Vaughan Gasquet in Louisiana to the expenses of a costly administration in that State, without there being any necessity for so doing. Mr. Gasquet has left the State of Louisiana forever, and there is no process known to the law by which he could be compelled to return to Louisiana. His estate there is now in the hands of the Court, being administered by a perfectly responsible officer of that Court, and the income is remitted to Mr. Gasquet in Tennessee every week as it accrues. Nobody could suffer any injury by delaying the decision in this case (No. 116) until case No. 656 can be reached on the docket, when the two can be disposed of together and all of the expenses and annoyance of having a Louisiana curator appointed in Louisiana, to serve no useful purpose, can be avoided and the matter finally disposed of by either ordering the delivery to Mr. Gasquet of his property in Louisiana, or denying his right to have his property turned over to him. Therefore, it seems to the writers that it would be expedient and entirely consonant with the ends of justice to consolidate cases Nos. 116 and 656, under the No. 656 of this docket, and let them come up together and be disposed of at the same time. Particularly, is this so, in view of the fact that the only person in this

litigation, whose welfare is in the slightest degree to be affected is Fernand Vaughan Gasquet.

ARGUMENT.

May It Please Your Honors:

From the statement of the case, it will have been evident that it was made to appear to the Supreme Court of Louisiana, prior to the judgment of interdiction having become final, that the attention of the Court was called by the presentation of the Tennessee proceedings and judgment therein that the plaintiff in error, the subject-matter of the entire proceedings, had removed from the State of Louisiana to the State of Tennessee, had become a citizen of that State, and had been pronounced sane and capable of taking care of his person and managing his property by a Court of competent jurisdiction of Tennessee, by evidence of the most conclusive character, giving to those proceedings and the judgment therein the effect to which they were entitled under the Constitution of the United States. The Supreme Court of Louisiana was bound to take notice of the fact that any judgment of interdiction, under the circumstances, would be the merest **brutum fulmen**, and it was not within the province of the Supreme Court of Louisiana to disregard the Tennessee proceedings and judgment, without denying to them full faith and credit.

Under **Art. 396 of the Revised Civil Code of Louisiana**, the Supreme Court of Louisiana was fully empowered to examine the interdict himself to satisfy itself that he was a fit subject for interdiction, and the receipt of new proof was fully authorized.

The right of the Supreme Court to do so was fully discussed and recognized in the case of **Franke v. His Wife, 29 An., 304,** and therefore that Court was bound to take notice of a change in status of the subject of the suit.

Revised Civil Code, Art., 396:

> "In case of appeal, the appellant Court may, if it is deemed necessary, proceed to the hearing of new proofs, and question, or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind."

Therefore, in every interdiction suit, the interdict himself is a part of the testimony—he is, as it were, one of the exhibits in the case, and anything in the way of a change in his condition should be carefully weighed by the appellate Court, and if it is made to appear to that Court at the time of the hearing in the appellate Court his condition is so changed as not to warrant his interdiction, unquestionably it is the duty of the Court to hold in such cases, where the interdict at the time of the hearing in the appellate Court was sane, that the proceedings should abate.

Article 396 of the Revised Civil Code in itself makes it apparent that there is no such thing as **res adjudicata** as to the mental condition of any person, whose interdiction is sought, and that where the subject of a suit is found to be sane, there should be an abatement of the case.

When the plaintiff in error removed from the State of Louisiana permanently, and became a citizen of another State, the very object of the suit passed out of ex-

istence, so far as the right of Louisiana Courts to determine his status was concerned.

The judgment rendered by the Probate Court of Shelby County, Tennessee, the Court of Gasquet's domicile, was, in no sense of the word, an attack on the Louisiana proceedings. The finding of that Court related to a period long subsequent to the time covered by the interdiction proceedings in Louisiana and evidenced conclusively a change in the mental condition of the subject of them after the period covered by the proceedings to interdict him in Louisiana. It might well be that the plaintiff in error was insane at the time the judgment in the Civil District Court for the Parish of Orleans, State of Louisiana, was rendered, and yet have been perfectly sane at the time when he was pronounced sane by the proceedings had in the Probate Court of Shelby County, Tennessee. In Louisiana, the law provides that interdiction terminates with the causes which gave rise to it.

> "**Article 420.** Termination of Interdiction. Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced."
>
> "**Article 421.** Forms in Revoking. Interdiction can only be revoked by the same solemnities which were observed in pronouncing it."

A consideration of these two articles, taken in connection with **Art. 415 of the Revised Civil Code**, makes it apparent that in a suit to remove an interdiction, there is involved no review or test of the correctness of the proceedings in which the judgment of interdiction was pro-

nounced. Those articles mean that when a person recovers his sanity, he proceeds to have his condition investigated by the Judge of his domicile at the time of his recovery and has himself pronounced sane and capable of managing his own affairs. The domicile of the interdict, no matter where he may have been interdicted, is the domicile of his curator, and of necessity the suit to remove the interdiction in the State of Louisiana is an entirely independent suit from that in which he was interdicted and must be brought at his domicile, that is to say, the domicile of his curator.

Art. 415, Revised Civil Code:

> "The person interdicted is, in every respect, like the minor who is under a tutor, both as it respects his person and estate; and the rules respecting the tutorship of the minor, concerning the oath, the inventory and the security, the recording of the legal mortgage, the mode of administering, the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the tutorship, the mode of rendering the accounts, and the other obligations, apply with respect to the curatorship of the person interdicted."

In Louisiana, it matters not what place may be the domicile of the minor, prior to the appointment of his tutor. After the tutor is appointed, the minor's domicile is the domicile of the tutor, and the domicile of the minor changes whenever the tutor changes his domicile.

Under the law of Louisiana, any minor above the age of eighteen years, has the right to apply to the Court to have himself relieved of all of the disabilities of

minority. This petition is presented to the Court of his domicile, the domicile of his tutor, without any regard to the jurisdiction in which the tutor may have been appointed. Therefore, it is submitted there can be no doubt that in Louisiana, when an interdict recovers his sanity, the interdiction proceedings are not attacked and are in no manner reviewed; but by an entirely independent suit, often in a different jurisdiction, the question of the interdict's mental condition is submitted in a new proceeding to the Court, and the Court only deals with his mental condition at the time the application to have his interdiction removed is made.

Now, in the instant case, what was there to prevent the plaintiff in error applying to the Court of his domicile, vested with jurisdiction to determine his sanity **vel non**, and having his sanity recognized there? He was present in person in Shelby County, Tennessee, the laws of Tennessee authorized the application he made, the application was made, and according to the forms prescribed by the Tennessee law, he was pronounced a citizen and **sui juris.**

So far as the effect of Gasquet's removal from Louisiana to Tennessee permanently and the proceedings pronouncing him a citizen of that State and sane are concerned, we are unable to see any difference between the effect of these facts on the case and the effect produced on the interdiction proceedings by the death of the subject of them.

In the case **In re Interdiction of Lambert, 115 La., at page 86,** the Supreme Court of Louisiana held that the effect of the death of the interdict, where the death occurred after the appeal was lodged in the Supreme

Court of Louisiana, was to put an end to the controversy, and the suit was abated.

In the case **In re Jones**, in the **117 La., 106**, where the subject of the suit died while the case was being argued in the Supreme Court, that Court held that the death of the appellant, who had been interdicted by the trial Court, pending the argument of the case, abated the case, and that everything in the case stopped right there.

> "Mrs. H. R. Jones was interdicted by judgment of the District Court, from which she took a suspensive appeal to the Supreme Court. An appeal also was taken by her from the judgment homologating the account of the curator **pro tem.**
>
> "The death of the appellant pending the argument of the case in this Court has been suggested, and a motion filed to dismiss the appeal. The motion must prevail. See **In re Lambert, 115 La., 469, 39 South., 447.**
>
> "The suit having abated, no judgment can be rendered therein, and each party must pay his own costs."
>
> **117 La., 106, 107.**

So, in this case, it was made to appear to the Supreme Court of Louisiana that, insofar as there could be any possible control by the Supreme Court of Louisiana of the person of the party who is the subject of the interdiction proceeding—all possibility of the exercise of such control had ceased to exist, and that, insofar as the control of his property by a Chancery Court was concerned, he was a citizen of another State **sui juris**, and under the Constitution of the United States, as such, was entitled in Louisiana to exercise all the prerogatives in

Louisiana of a citizen of Louisiana, and that as no Court in Louisiana could control a citizen of Louisiana **sui juris** in the full and complete disposal and control of his property, therefore, no Court in Louisiana could control the plaintiff in error in the full exercise of the possession, control and disposition of his property in Louisiana.

The only way to escape this effect is to fail to give to the Tennessee proceedings and judgment the full faith and credit accorded them by the Federal Constitution, and to deny to the plaintiff in error equal rights, privileges and immunities of a citizen of Louisiana.

Defendants in error's contention seems to be that the proceedings for interdiction, as evidenced by the record of said proceedings at the time of plaintiff in error's application to the Probate Court of Shelby County, Tennessee, **ipso facto**, as a matter of legal consequence, precluded him from changing his domicile from Louisiana to Tennessee, and hence precluded the Tennessee Court from inquiring, as a matter of fact, into his then mental condition and his qualifications for citizenship and his capacity to take care of his person and administer his estate.

If the interdiction proceedings in themselves were no bar to plaintiff changing his dimicile, then the judgment of the Probate Court of Shelby County, Tennessee, is conclusive evidence of plaintiff in error's citizenship and of his present capacity to take care of his person and administer his estate as therein adjudicated, and is entitled under Article 4, Section 1, of the Constitution of the United States to full faith and credit in Louisiana, and when given its due full faith and credit plaintiff, as a citizen of Tennessee, entitled to all the privileges and immu-

nities of a citizen of Louisiana, in Louisiana, under Art. 4, Sec. 2 of the Constitution of the United States, and this Court is bound to so decree.

There is no final judgment of interdiction against plaintiff. If the interdiction proceeding now pending before this Court should be decided in favor of plaintiff in error, he will never have been under any disabilities. He has never been under guardianship, and, **non constat,** that he ever will be. Defendants in error's position, that the pendency of an interdiction proceeding is equivalent to a final adjudication of incompetency or interdiction, cannot be sustained. If the pendency of an interdiction suit had the effect of depriving a party of his civil rights, it is manifest that this proceeding contemplating solely the protection of unfortunate members of society who are unable to care for themselves, might easily be distorted into and often resorted to as a vehicle of fraud and oppression.

Civil Code of La., Arts. 400 and 401 relied on by defendants as supporting their view came squarely before the Supreme Court of Louisiana for interpretation in the case of **De Lesdernier v. De Lesdernier, 45 An., 1366,** where the Court said:

> "The defendant objects to this suit on the ground that the wife was incapable of acting (bringing a suit for divorce against him) after the petition for interdiction had been filed. There is no provision of the statute law, nor is there any article of the Code which prevents the defendant in proceedings to interdict him from performing acts, such as bringing suits and making contracts."
>
> **45 An., 1366.**

In the case of **In re Jones, 116 La., 776,** the inoperation of an interdiction proceeding pending on appeal was discussed and determined. It is the confirmative sentence only that can pronounce a judgment of interdiction. No curator can be appointed until the judgment is final.

In the instant case, an attempt was made to have a curator appointed and an order appointing a curator was signed, but on the application of the plaintiff in error, the appointment was rescinded by the Judge of the Civil District Court for the Parish of Orleans.

As no curator can be appointed until there is a final judgment of interdiction, **Article 398 of the Civil Code** can be given no effect.

The proceedings lack all the elements of finality and even a **prima facie** showing of incompetency cannot be predicated thereon.

But indulging, **arguendo,** the theory of defendants in error that by the mere filing of the petition for interdiction, plaintiff in error became **non sui juris,** nevertheless it would not follow that he was concluded from acquiring a domicile in Tennessee, and the Probate Court of Shelby County had jurisdiction to hear and determine his suit. Your Honors will bear in mind that it appears from this record that plaintiff in error had been pronounced sane and capable of taking care of his person and property by a respectable Court of Louisiana before he moved into Tennessee.

> "The mere fact that a person is of unsound mind does not necessarily preclude him from establishing a domicile, as the question must depend entirely upon the extent to which his reason

has been impaired. In general it may be stated that but a comparatively slight degree of understanding is required in order that his action may be recognized."

14 Cyc., 848, and authorities cited.

"So far as it affects the succession of property, the act of the ward in changing his domicile is no more inconsistent with or prohibited by the guardianship than is his act in making a will. Both acts require competent mental capacity, and the decree of guardianship is not conclusive of the want of capacity to do either act. That decree does not fix the general status of the ward as a lunatic or an insane person, but only his local status as one under guardianship in this Commonwealth as an insane person, and is conclusive only in the domestic Courts and as to acts which the law required to be done by the guardian and forbids to be done by the ward."

Talbot v. Chamberlain, 20 N. E., 306.

"When Mr. Stone left this State and went to Iowa to establish his residence there, he had sufficient mental capacity to change his domicile, and he was not under guardianship. The petition for the appointment of a guardian over him was pending, and he had attended a hearing upon it, but there was no adjudication that he was a proper subject for guardianship and no appointment of guardian until several weeks after he took up his residence in Iowa. He was under no custody or restraint and there was no one who had a right to assent or object to his removal."

Talbot v. Chamberlain, 20 N. E., 307.

To the same effect are **Breed v. Pratt, 18 Pick., 115; Mowry v. Latham, 23 Atl. (R. I.), 13; Holyoke v. Haskins, 16 Am. Dec., 375.**

"A person actually insane may acquire a domicile in the place of his actual residence, if he has sufficient capacity to choose a residence."

Concord v. Rumney, 45 N. H., 423; 17 Cent. Digest, Verbo "Domicile," Sec. 1.

In the case of **Woodward v. Woodward, 87 Tenn., 11 S. W. Rep., 892,** it was held that a minor, under guardianship in Tennessee, could change her domicile to Louisiana, and when relieved of the disabilities of minority by a Louisiana Court could take possesson of her estate in Tennessee, although had she remained in Tennessee she could not have done so before attaining the age of 21 years.

And even if the interdiction proceeding imports a **prima facie** incapacity to acquire a domicile, whether such capacity for acquisition of citizenship as the laws of Tennessee require existed, was a question of fact to be determined by the Court and jury to which the issue was submitted. In Judge Cooley's great work on Constitutional Limitations, it is said:

"* * * where the jurisdiction may be said to depend upon the existence of a certain state of facts which must be passed upon by the Courts themselves and in respect to which the decision of the Court once rendered, if there was any evidence whatever on which to base it, must be held final and conclusive in all collateral inquiries, notwithstanding it may have erred in its conclusion."

Cooley, Constitutional Limitations, p. 586; Flanning v. Kraupfl, 26 N. W., 133; Schee v. La Grange, 42 N. W., 616.

In **Freeman on Judgments,** it is observed:

> "Courts of record are presumed to act only in accordance with the authority vested in them by law. Their judgments will generally be treated as conclusive on the parties until the absence of jurisdiction is affirmatively shown. These principles are almost universally recognized in regard to domestic judgments. They are by a preponderance of the authorities considered as applicable with equal force to judgments of other States. 'It is obviously essential to the effectual operation of the design of the Constitution that the records of the judgments of other States duly authenticated under the act of Congress should not merely prove themselves, but give rise to a presumption that the Court possessed the authority which it assumed to exercise."
>
> **Freeman on Judgments, Sec. 565, p. 470.**

And in **Sims v. Gay, 9 N. E., 121,** it is said:

> "Where a Court has authority to determine the facts essential to its jurisdiction, its decision that it has jurisdiction cannot be collaterally impeached."

The Supreme Court of the State of New York, in the case of **In re Fidelity Trust Company of Newark, 57 N. Y. Supp., 361,** said:

> "The Fidelity Trust Company of Newark was appointed committee of the person and estate of the incompetent Mary B. McDermot, by decree of the Orphans' Court of Essex County, N. J., a Court having jurisdiction to make such appointments in general. The incompetent's next of kin,

Mrs. Jennie E. Mead, consented to the entry of the decree, but now seeks her own appointment as committee and opposes the Trust Company's motion for ancillary appointment in this State upon the ground that the incompetency of said Mary B. McDermot had been declared in the course of proceedings in this Court prior to the date of such incompetent's removal to New Jersey, and that, being then incompetent, she could acquire no residence in that State; hence, that the foreign Court had no jurisdiction. It is true that Mary B. McDermot was declared an incompetent person on the return of an inquisition in lunacy upon a commission issued by this Court, but no appointment of a committee was made in those proceedings and the effect of the inquisition was not to preclude absolutely any exercise of an intention of change of residence of the incompetent, since the ability to choose a domicile still remains a question of fact, notwithstanding the inquisition."

* * * * * * * * *

"As to the fact of Mary B. McDermot's ability to choose a domicile in New Jersey, upon which the jurisdiction of the foreign Court might be said to depend, that Court has determined the fact and the next of kin, Mrs. Mead, is concluded from disputing it."

In re Fidelity Trust Co. of Newark, 57 N. Y. Supp., 361.

The question of capacity is one of fact to be determined by the Judge or jury.

21 Howard, 103; 75 Ala. 438; 58 Mass. (4 Cush.) 190; 86 Mass. (4 Allen) 177; 126 Mass., 161; 128 Mass., 219; 58 N. H., 283; 61 N. Y., 261; 27 N. W., 320; Century Digest, Vol. 17, Sec. 40, p. 1100.

In the case of **Breed v. Pratt,** Chief Justice Shaw said:

> "The Court is of opinion that the fact that the testator was under guardianship at the time of the execution of the will * * * did not **de facto** disqualify him from making a valid will, nor does it operate as conclusive evidence of insanity. This point is now to be considered as settled by authority."
>
> **Breed v. Pratt, 18 Pick. (Mass.) 117.**

The law does not inquire into the purposes or motives which induced a party to change his domicile. All it is necessary, in order to affect a change of citizenship from one State to another is to depart from a State of one's domicile into another State, with the intention of remaining there permanently. A man may change his citizenship with the sole motive of invoking the jurisdiction of the Federal Courts, if the change he made was with a **bona fide** intention of permanently remaining in the State to which his citizenship is to be changed.

3 Wash. U. S. (C. C.) 553; 2 Sumner, 254; 129 U. S., 328; 126 U. S., 192.

> "A change of domicile may be made through caprice, whim or fancy, for business, pleasure, to secure a change of climate or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention."
>
> **In re Newcomb's Estate, 84 N. E., 954,** citing **McConnell v. Kelly, 128 Mass., 372.**

> "A man has a right to change his domicile for any reasons satisfactory to himself. In determin-

ing whether there has been such a change from one place to another, the test is to inquire whether he has in fact removed his home to the latter place with the intention of making it his residence permanently or for an indefinite time. If he has, he loses his old domicile and acquires a new one, with all its rights and incidents; and the law does not inquire into the purposes or motives which induced him to make such change. It may be because he prefers the laws of the new place of domicile, or because he can diminish his taxes and other burdens, or because he desires to bring a suit in a Court which would not otherwise have jurisdiction. **(Thayer v. Boston, 124 Mass., 132.)** His status as an inhabitant depends upon the fact that he has made a change of his home and not upon the motives or reasons which influenced him to do so."

McConnell v. Kelly, 138 Mass., 372.

"Interdiction ends with the causes which gave rise to it."

R. C. C., Art. 420.

It would serve no useful purpose to multiply the citation of authority on this subject. It suffices to say that under every system of law accessible to research, this necessary and humane qualification of a judgment of interdiction exists and is given effect.

It follows irresistibly that plaintiff in error had the right and capacity to acquire a domicile in Tennessee, and the Probate Court of Shelby County, Tennessee, had jurisdiction of his petition, and the judgment rendered thereon is absolutely conclusive in this proceeding under Art. 4, Sec. 1, of the Constitution of the United States and Act of Congress of May 26, 1790. This Court must give

the judgment the same effect as it has in the State in which it was rendered.

This Honorable Court has had occasion a number of times to decide this question, and there is a long unbroken line of jurisprudence of that Court on the subject from the case of **Mills v. Duryee, 7 Cranch, 481,** to the present time.

As said in the case of **Insurance Co. v. Harris, 97 U. S., 336,** referring to Art. 4, Sec. 1, of the Constitution of the United States, and Act of Congress of May 26, 1790:

> "The meaning of this is, that when a judgment or decree has been given in one State by a Court having jurisdiction of the parties and the subject, it has the same force and effect when pleaded or offered in evidence in the Courts of any other State."
>
> Citing **Mills v. Duryee, 7 Cranch, 481; Mayhew v. Thatcher, 6 Wheat., 129; Habich v. Folger, 20 Wall., 1; Burnly v. Stephenson, 24 Ohio, 474; Dobson v. Pearce, 12 N. Y., 156.**

And in **Christmas v. Russell, 5 Wall., 290:**

> "When duly pleaded and proved such judgments have the effect of being not merely **prima facie** evidence, but conclusive proof of the rights therein adjudicated; and a refusal to give them the force and effect in this respect which they had in the State in which they were rendered denies to the party a right secured to him by the Constitution and laws of the United States.
>
> "The requirement of the Constitution is not that some, but that full faith and credit shall be given

by States to the judicial decrees of other States. That is to say, where a decree rendered in one State is embraced by the full faith and credit clause, that constitutional provision commands that the other States shall give to the decree the force and effect to which it was entitled in the State where rendered."

Harding v. Harding, 198 U. S., 317; Haddock v. Haddock, 201 U. S., 562.

The following is a list of authorities interpreting this provision of the Constitution of the United States and the Act of Congress of 1790:

Hampton v. McConnell, 3 Wheat., 234; Mayhew v. Thatcher, 6 Wheat., 129; D'Arcy v. Ketchum, 11 How., 165; Lafayette Insurance Co. v. French, 18 How., 404; Christmas v. Russell, 5 Wall., 290; Green v. Van Buskirk, 7 Wall., 139; Cooper v. Reynolds, 10 Wall., 308; Chew v. Brumagen, 13 Wall., 497; Crapo v. Kelly, 16 Wall., 610; Board of Public Works v. Columbia College, 17 Wall., 521; Thompson v. Whitman, 18 Wall., 457; Habich v. Folger, 20 Wall., 1; Maxwell v. Stewart, 22 Wall, 77; South Ottawa v. Perkins, 94 U. S., 260; Pennoyer v. Neff, 95 U. S., 714; Insurance Co. v. Harris, 97 U. S., 331; Embry v. Palmer, 107 U. S., 3; Hanley v. Donoghue, 116 U. S., 277; Chicago, etc., Ry. Co. v. Wiggins Ferry Co., 119 U. S., 615; Cole v. Cunningham, 133 U. S., 107;

Reynolds v. Stockton, 140 U. S., 254; Chicago, etc., R. Co. v. Sturm, 174 U. S., 710; Hancock Nat. Bank v. Farnum, 176 U. S., 640; Lynde v. Lynde, 181 U. S., 183; Harding v. Harding, 198 U. S., 317; Harris v. Balk, 198 U. S., 215; Louisville, etc., R. Co. v. Deer, 200 U. S., 176; Haddock v. Haddock, 201 U. S., 562.

The judgment of the Probate Court of Shelby County, Tennessee, being conclusive evidence of all the rights therein adjudicated, and being entitled to full faith and credit in the State of Louisiana, the plaintiff, a citizen of Tennessee, is entitled "to all privileges and immunities of citizens of the several States," under Art. 4, Sec. 2, of the Constitution of the United States.

The plaintiff in the State of Tennessee enjoys all the rights and privileges of every other citizen of Tennessee. In that State he is under no disabilities whatever. He is therefore entitled in Louisiana "to all privileges and immunities" of citizens of Louisiana.

In construing the equal privileges and immunities clause of the Federal Constitution, this Court has as, in dealing with other clauses, announced its intention of developing the definition of its meaning by the gradual process of judicial exclusion and inclusion; but Mr. Justice Washington, in the case of **Corfield v. Coryell, 4 Wash. C. C., 371-380,** went very far towards defining the meaning of this clause of the Constitution, and his definition as far as he went has been accepted by this Court without qualification. He said:

"The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, **fundamental**; which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be comprehended under the following general heads: protection by the Government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State for the purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of **habeas corpus**; to institute and maintain actions of any kind in the Courts of the State; **to take, hold and dispose of property**, either **real or personal**; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elective franchise, as regulated and established by the laws or Constitution of the State in which it is to be exercised."

See **Blake v. McLung, 172 U. S., 248.**

In the case of **Ward v. Maryland, 12 Wall., 430,** this Court said:

> "Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the Courts of the State; and to be exempt from any higher taxes than are imposed by the State upon its own citizens."

Again, in the case of **Paul v. Virginia, 8 Wall.,** Mr. Justice Field, as the organ of the Court, said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.
>
> "Indeed, without some provision of the kind removing from the citizens of each State the disa-

bilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Paul v. Virginia, 8 Wall., 180.

In concluding this brief, the writers again request the Court, as a matter of expediency, to save the subject of this interdiction proceeding, who is now entirely sane and a citizen of the State of Tennessee, from the expense of having his property administered by a Louisiana Court, in any event, until after suit No. 656 of the docket of this Court, in which he has brought suit against the defendants in error in this case to recover possession of his property, to which he is entitled as a citizen of Tennessee **sui juris**, shall have been considered and determined by the Court. A personal curator cannot reach him. His proprty is already in the hands of the Court and perfectly safe. His income has been remitted to him regularly, week by week, for more than three years, by the testamentary excutor of his mother's succession, and he will continue to do so; and there is no good reason that we can see why such an imposition, under the circumstances, should be inflicted on him. It will be time to order the appointment of a curator to take possession of his Louisiana property and administer it, when your Honors shall have determined suit No. 656, and decided whether or not the judgment of the Probate Court of Shelby County, Tennessee, shall be given full faith and credit, and the plaintiff in error held to be entitled to all

the rights and privileges, as a citizen of Tennessee, of a citizen in Louisiana.

Respectfully submitted,

J. C. & THOS. GILMORE,

WM. WINANS WALL,

Attorneys for Plaintiff in Error.